IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8620 of 1988
with
SPECIAL CIVIL APPLICATION Nos 2794 to 2810 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

ANIL STARCH PRODUCTS LTD

Versus

DAHYABHAI SURABHAI

Appearance:

1. Special Civil Application No. 8620 of 1988
MR SV RAJU with MR CHETAN PANDYA for Petitioner
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 16/04/2004

C.A.V. JUDGEMENT

1. By this group of petitions under Article 227 of the Constitution, the employer has challenged similar orders made in its appeals by the appellate authority under the Payment of Gratuity Act, 1972 (the Act for short), whereby the appeals of the petitioner are rejected and the original orders of the controlling authority ordering additional payment of various sums ranging from Rs.333/- to 2,178/- by way of gratuity were confirmed.

2. None has appeared for the respondent-workmen. The main grounds of challenge as strenuously canvassed by the learned counsel for the petitioner were that the provisions of Section 4 of the Act providing for payment of gratuity on the basis of continuous service rendered were not properly interpreted and applied and that the original applications of the respondents were delayed and the delay ought not to have been condoned.

3. It was submitted that, although the respondents concerned were paid due amounts of gratuity at the time of termination of their service on the basis of the years of their continuous service, the respondents had made applications before the controlling authority under the Act claiming to have put in more years of service and claimed additional amounts of gratuity on that basis. He submitted that the workmen had joined the service under the petitioner as "badli worker" or "temporary workman" and were made permanent in the service after several years. The period of service as "badli worker" or "temporary workman" was discarded by the employer for the purpose of calculating the amount of gratuity since that earlier period was not "continuous service". Even for the subsequent period, no evidence was led to show that the workmen had actually worked for 240 days in a year.

4. It appears from the original orders of the controlling authority that the petitioner had presented before the authority a chart of wages and number of days worked which was admitted by the workmen. A copy of such chart is not annexed with the petitions and, therefore, it is not open for the petitioner to submit that the factual data submitted by the petitioner was misread. The contention that was canvassed was that, merely because the workmen were made permanent, the requirement of actual working of 240 days in a year was not obviated. That contention, also canvassed before the appellate authority, was negatived with the observation that it was not legal not to add to the number of days worked casual leave, period of lay off, accidental and sick leaves and other authorized absence. Out of the group of 19

respondents, the original orders for additional payment were duly modified in 12 cases in the two connected and consolidated orders of the appellate authority in Gratuity Appeals Nos.166 of 1988 and 21 of 1988.

5. From the above facts on record, it is clear that there was no scope for re-agitating the factual aspects. It was, however, argued that the definition of "continuous service" as given in Section 2-A of the Act required that, when an employee was not in continuous service, the period of service has to be counted on the basis of the days actually worked, particularly when the workman was not granted the status of a permanent workman. This argument could not be accepted, because the question of applying sub-section (2) of Section 2-A arises only when sub-section (1) does not cover the case of the workmen. The reliance placed on LALAPPA LINGAPPA v. LAXMI VISHNU TEXTILE MILLS LTD. [AIR 1981 SC 852] by the petitioner is misconceived since the judgment is based upon interpretation of Section 2 (c) as it then stood. It is, however, observed in para 13 of that judgment that in construing a social welfare legislation, the Court should adopt a beneficent rule of construction; if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, effect must be given to it whatever may be the consequences, for, in that case, the words of the statute speak the intention of the legislature. In their anxiety to advance beneficent purpose of legislation, the Courts must not yield to the temptation of seeking ambiguity when there is none. In the facts of that case, the employees were proved and believed to be badli employees and held to be not covered by the substantive part of the definition of "continuous service" in Section 2 (c), but held to fall within Explanation I of the pre-amendment provision. The judgment of the Madras High Court in D.M.CORPORATION v. REGIONAL LABOUR COMMISSIONER [1981 (II) L.L.J. 137] was cited to elucidate the meaning of the word "actually" for counting the days of working. In view of the factual finding in the present cases that the employees had been in continuous service within the meaning and definition of sub-section (1) of Section 2-A, the exercise of counting actual days worked is futile and rightly avoided. Therefore, the impugned orders are not required to be interfered in exercise of the extraordinary jurisdiction of this Court under Article 227 of the Constitution.

6. The learned counsel also vehemently argued that the delay in making of the application before the controlling authority was condoned without sufficient reasons despite specific objection of the petitioner and relied in that context upon the judgment of the Karnataka High Court in BINNY LTD. v. H.K.MADIAH [1987 LAB.I.C. 931] wherein it is observed that plea of limitation raised by the employer cannot be characterized as technical plea. The ultimate order in that case was, however, that, in case the workman had moved the controlling authority within a period of one year from the date of adjudication by the employer, the petitioner-management was directed to pay full amount as awarded by the appellate authority as ex-gratia. In the facts of the present cases, the delay appears to have been consciously condoned after being satisfied about sufficiency of reason which was that the workmen were assured by the management about additional payment of gratuity after obtaining approval from the headquarter. Thus, the delay having been duly condoned in proper exercise of discretion by the controlling authority, it again cannot be interfered in exercised of the extraordinary jurisdiction of this Court under Article 227 of the Constitution.

7. Accordingly, the contentions of the petitioner being negatived, the petitions are rejected and Rule in each of the petitions is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)